

Chapter 26
Food Service

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Chapter 26
Food Service

Article I
Definitions and Jurisdiction

26.01 JURISDICTION

This Ordinance shall be effective in all territory embraced within the limits of McLean County as provided by law.

26.02 GENERAL DEFINITIONS

In addition to the definitions contained in the State of Illinois Retail Food Service Sanitation Code and the Illinois Retail Food Store Sanitation Code, the following general definitions shall apply in the interpretation and enforcement of this Ordinance:

Adulterated - the condition of food if it:

- (a) bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;
- (b) consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption;
- (c) has been processed, prepared, packed or held under insanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or
- (d) is in whole or in part of the product of a diseased animal, or an animal which has died otherwise than by slaughter.

Approved - acceptable to the Board of Health based on its determination as to conformance with good public health practices and standards.

Board of Health - the Board of Health of the McLean County Health Department of the County of McLean, Illinois, or its authorized representatives.

Certified Food Service Manager or Supervisor - a person certified in compliance with Section 750.540 of the Illinois Department of Public Health Food Service Sanitation Rules and Regulations, 1987 and any subsequent amendments or revisions thereto.

Equipment - stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, and similar items other than utensils, used in the operation of a food service establishment.

Food - any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

Food service establishment - any place where food is prepared and intended for, though not limited to, individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term also includes delicatessen type operations that prepare foods intended for individual portion service. The term does not include lodging facilities serving only a continental breakfast, (a continental breakfast is one limited to only coffee, tea, and/or juice and commercial prepared sweet baked goods), private homes or a closed family function where food is prepared or served for individual family consumption, retail food stores or the location of food vending machines.

Law - State and Local statutes, Ordinances, and regulations.

Local health department - the McLean County Health Department.

Person - any individual, partnership, corporation, association, or other legal entity.

Potentially hazardous food - any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms. The term does not include foods which have a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less. (Amended 11-20-07)

Retail food store - any establishment or section of an establishment where food and food products are offered to the consumer and intended for, though not limited to, off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments that handle only pre-packaged spirits; roadside markets that offer only fresh fruits and fresh vegetables for sale; food service establishments; or food and beverage vending machines.

Sanitized - effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level (when those disease organisms which may be present are destroyed so as to prevent transfer) on cleaned food-contact surfaces of utensils and equipment.

Single service utensils - cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one-person use and then discarded.

Temporary food establishment - a food service establishment or a retail food store that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single special event or celebration.

Utensil - any implement used in the storage, preparation, transportation, or service of food.

Wholesome - in sound condition, clean, free from contamination, and otherwise suitable for use as human food.

26.03 STATE OF ILLINOIS RULES AND REGULATIONS ADOPTED BY REFERENCE

In addition to those provisions set forth herein, this Ordinance shall adopt by reference the rules and regulations set forth in the following State of Illinois, Department of Public Health publications:

(A) The publication entitled, "Food Service Sanitation Code," adopted 1993 and any subsequent amendments or revisions thereto; and

(B) The publication entitled, "Inspector's Field Guide" adopted November 2009" and any subsequent amendments for revisions thereto; and (Added 11-17-09) (Amended 10-16-12)

(C) 410 ILCS 82/ Smoke Free Illinois Act and any subsequent amendments for revisions thereto. (Added 10-16-12) (Section amended 10-21-14)

26.03-1 Certified copies on file. Three certified copies of each shall be on file in the office of the McLean County Clerk.

Article II Food Service Establishments

26.04 PUBLIC TOILET FACILITIES

All food service establishments that serve alcoholic beverages for consumption on the premises shall provide adequate public toilet facilities that are separate for men and women. Table 7.21.2 of the Illinois State Plumbing Code, 1983, and any other subsequent amendments or revisions thereto, will be used for the recommended number of fixtures. However, the minimum number of fixtures provided shall be a water closet, urinal and lavatory in the men's room and a water closet and lavatory in the women's room. Other food service establishments that provide public toilet facilities shall also satisfy the above requirements.

26.05 FOOD SANITATION REQUIREMENTS

Potentially hazardous food shall be maintained at safe temperatures of 41 degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, as appropriate except during necessary periods of preparation and serving. (Added 11-17-09)

26.06 – 26.07 RESERVED (Amended 11-17-09)

26.08 PERMIT

It shall be unlawful for any person to operate a food-service establishment within the County of McLean, or its police jurisdiction, who does not possess a valid permit which shall be issued annually to him by the Board of Health. Only a person who complies with the requirements of this Ordinance shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person and place to another person or place or from one mobile unit to another mobile unit. A valid permit shall be framed and posted in conspicuous view of the public in every food-service establishment. (Amended 09-20-94, 10-21-03)

26.08-1 Issuance of permits.

(A) Any person desiring to operate a food-service establishment shall make written application for a permit at least one week prior to the proposed date of opening on forms provided by the Board of Health. Such application shall be completed and signed by the owner or his or her representative.

(B) Upon receipt of such an application, the Board of Health shall cause to be inspected the establishment named in the application prior to the date of opening; and it shall determine if the establishment is in compliance with the provisions of this Ordinance. When an inspection reveals that the provisions of the Ordinance have been met, a permit shall be issued. The permit for full-time establishments is valid through December 31 of the year issued. Seasonal permits expire six months after the date of issue or December 31, whichever one occurs sooner. (Amended 11-17-92)

(C) Any person who has not paid their annual fee for the renewal of their food permit by January 1 of the permit renewal year shall be considered to be operating a food service establishment without a valid permit. However, the annual fee for the renewal of seasonal permits shall be paid at least one week prior to the reopening of the establishment. (Added 10-19-93)

26.08-2 Suspension of permits.

(A) Permits may be suspended temporarily by the Board of Health for failure of the holder to comply with the requirements of this Ordinance.

(B) Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of Section 26.10-3 of this Ordinance, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, suspended and that the opportunity for a hearing will be provided, if within 72 hours, a written request for a hearing is filed with the Board of Health by the permit holder.

(C) Notwithstanding the other provisions of this Ordinance, whenever the Board of Health finds insanitary or other conditions in the operations of a food-service establishment which, in its judgment, constitutes a substantial immediate hazard to the public health, it may without warning, notice or hearing, issue a written notice to the permit holder or operator citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken; and, if deemed necessary, such order shall state that the permit is suspended at the time of inspection, and all food-service operations are to be immediately discontinued.

(1) Any person to whom such an order is issued shall comply there with, but, upon written petition filed not more than 72 hours after the discontinuance order, may request a hearing for abatement of the order.

(2) The Board of Health shall provide a hearing not later than 5 days from the filing of said petition.

26.08-3 Reinstatement of suspended permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within 5 days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the Board of Health shall make a reinspection. If the applicant is in compliance with the requirements of this Ordinance, the permit shall be reinstated.

26.08-4 Revocation of permits.

- A) The Board of health may revoke the permit of a licensed establishment for the following reasons.
- 1) Any fines imposed by judgment, arbitration, or by default and not fully paid to the health department within 30 days after the decision for the fine to be paid or by the date of permit renewal, whichever occurs first; or
 - 2) For serious and/or repeated violations of this ordinance; or
 - 3) For interference with the Board of Health in performance of its duties;
- B) Right to hearing on revocation of permit.
- 1) Revocation of a permit as a result of any fines imposed by judgment, arbitration, or by default and not fully paid will not be entitled to a hearing.
 - 2) For serious and/or repeated violations of this ordinance or, for interference with the Board of Health in performance of its duties; the permit may be permanently revoked after an opportunity for a hearing has been provided by the Board of Health. Prior to such hearing, the Board of Health shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of 5 days following service of such notice unless within such 5 day period a written petition for a hearing is filed with the Board of Health. The Board of Health shall provide a hearing not later than 5 days from the filing of said petition. A permit may be suspended for cause pending its revocation or a hearing relative thereto.
- C) When a permit is suspended or revoked, no part of the fees paid for a permit shall be refunded to the permit owner or operating the food service establishment.
- D) Reinstatement of Permit –
- In cases where the revocation of the permit was the result of unpaid fines, the establishment may submit a written application on forms provided by the Board of Health for a new food permit after 30 days of satisfactorily paying all outstanding fines owed to the Health Department. Any establishment submitting a written application to reinstate a permit shall comply with all current food codes and regulations at the time of submitting an application prior to serving food.

In cases involving repeated violation or interferences with the performance of duties, the Board of Health will determine during the hearing if a person operating a food establishment may re-apply for a new permit. The decision by the Board of Health to allow a person to submit a written application to reinstate a permit shall comply with all current food codes and regulations at the time of submitting an application prior to serving food.
(Amended 11-16-10)

26.08-5 Food Permit Classifications Food permits shall be divided into the following classes:

Class A

- (1) A food service establishment that meets all of the following criteria:
 - a) Potentially hazardous foods are routinely heated, cooled and reheated.
 - b) Prepares and serves potentially hazardous foods for more than one meal period a day.
 - c) Prepares and serves potentially hazardous foods a minimum of six days a week.

- d) Preparation and service of potentially hazardous foods is the principal feature of the food service business of the food service establishment.
- e) The total occupancy of the food service establishment is a minimum of 200, excluding banquet rooms and bar rooms where food from the kitchen is not routinely served.

Total occupancy is based on the 1993 National Fire Protection Association Life Safety Code 101 and any subsequent amendments or revisions thereto.

- (2) A State of Illinois licensed nursing home or hospital.

Class B

- (1) A food service establishment that prepares and serves potentially hazardous foods but does not meet the requirements for either a Class A or Class C food permit.
- (2) A bakery where food items are prepared on-site from two or more ingredients.
- (3) A caterer where the primary operation of the food business is preparation of food items for consumption at a location other than its base of operation.
- (4) A mobile food unit with food preparation of potentially hazardous foods other than frankfurters.
- (5) A vending commissary where food is prepared, processed, packaged or repackaged.
- (6) A State of Illinois licensed Day Care Center where food is prepared on-site.

Class C

- (1) A food service establishment that serves only beverages such as alcoholic drinks, soft drinks, juices, espresso, cappuccino, tea and milk.

Any food preparation of potentially hazardous foods is limited to commercially prepared, prepackaged, potentially hazardous foods such as sandwiches, soups, frozen pizzas, frankfurters and nachos cheese that require no preparation other than heating prior to service.

Potentially hazardous food cannot be cooled and reheated.

Hand-dipped ice cream can be served.

- (2) Mobil food units or pushcarts limited to serving non-potentially hazardous foods, commissary wrapped potentially hazardous foods and/or the preparation and service of frankfurters.
- (3) All potentially hazardous foods for service are catered to the facility by a food service establishment with a McLean County Food Permit.
- (4) Only non-potentially hazardous foods are prepared and served. Commercially prepared baked goods are baked off-site.
- (5) A State of Illinois licensed Day Care Center where all food served is catered to the facility by a food service establishment with a McLean County Food Permit.

Class D - Reserved for future use.

Class E - Reserved for future use.

Class F - Exempt Establishments - churches, schools, governmental units and charitable, tax-exempt, not-for-profit corporations registered under Section 501 (C) (3) of the Internal Revenue Service Code.
(Entire section 26.08-5 added 9-17-85, amended 11-19-91, 11-17-92, 09-20-94, 09-17-96)

26.08-6 Food Service Establishment Permit Fees. The annual fees for food permits shall be:

Class A Permit - \$519.00

Class B Permit - \$391.00

Class C Permit - \$262.00

Class D Permit - Reserved for future use.

Class E Permit - Reserved for future use.

Class F Permit - No Fee

(Amended 11-19-91, 11-17-92, 09-20-94, 09-19-95, 09-17-96, 09-16-97, 10-20-98, 09-14-99, 10-17-00, 10-16-01, 11-19-02, 10-21-03, 11-16-04, 11-15-05, 11-21-06, 11-20-07, 11-17-08, 11-17-09, 11-16-10, 10-18 -11, 10-16-12, 12-17-13, 10-21-14)

(A) Such fees shall be non-refundable and payable upon receipt of an invoice issued by the Board of Health.
(Amended 11-17-08)

(B) Fees for permits issued after June 30 shall be reduced by one half the annual fee.

(C) Fees for seasonal permits issued for periods of six months or less during any calendar year shall be reduced by one half of the annual fee.
(Entire Section 26.08-6 added 9-17-85 and amended 11-17-92)

26.08-7 Fees for first permits. The fee for the first permit issued to an owner, for each food service establishment owned or operated, shall be increased by 40% of the annual fee for that establishment. If a business changes location, the owner shall be required to pay the 40% surcharge for the first permit at the new location. (Added 11-17-92, amended 10-21-03)

26.08-8 Penalty fee for late permit renewal payments. A late penalty fee of \$50.00 shall be assessed for permit renewal payments received after January 7 of the permit renewal year. The late penalty fee shall be increased to \$100.00 for payments received after January 21 of the renewal year. Any food service establishment operating after February 4 of the permit renewal year without a renewed, valid permit, shall discontinue operation or be subject to prosecution pursuant to Section 26.08 and to the penalties contained in Section 26.16 of this Ordinance. (Added 10-19-93)

26.09 HEARINGS

(A) The hearings provided for in this section shall be conducted by a quorum of the members of the Board of Health at a time and place designated by it.

(B) Based upon the record of such hearing, the Board of Health shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing.

(C) No action to sustain any order or revocation may be entered into without the concurrence of a majority of the members of the Board of Health. Any other action may be confirmed, modified or rescinded by a simple majority of the members present at such hearings.

(D) A written report of the hearing decision shall be furnished to the permit holder by the Board of Health.

26.09-1 Judicial review of decisions. Any person, firm or corporation affected by the decisions, rules or regulations of the Board of Health of McLean County, Illinois, may have the decisions of said Board of Health reviewed in the Circuit Court of McLean County, Illinois, and all amendments and modifications thereof, and the rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of final administrative decisions of the said Board of Health. The term "Administrative Decisions" is defined in Section 1 of said Administrative Review Act.

26.10 INSPECTION OF FOOD-SERVICE ESTABLISHMENTS

The Board of Health shall routinely inspect each food-service establishment located in the County of McLean, or its police jurisdiction, at a minimum frequency in accordance with the following schedule and shall make as many additional inspections and re-inspections as are necessary for the enforcement of this Ordinance:

Class A Permits - Four times per year
Class B Permits - Three times per year
Class C Permits - Two times per year
Class F Permits - Two times per year*

* State of Illinois licensed nursing homes and hospitals shall be inspected at the same frequency as Class A.
(Amended 09-20-94, 09-17-96)

26.10-1 Access to establishments. The Board of Health, after proper identification, shall be permitted to enter, at any reasonable time, any food-service establishment within the County of McLean, or its police jurisdiction, for the purpose of making an inspection to determine compliance with this Ordinance. It shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received, or used and persons employed.

26.10-2 Inspection records, rating value, and rating scores. Whenever the Board of Health makes an inspection of a food-service establishment, it shall record its findings on an inspection report form provided for this purpose, and shall furnish a copy of such inspection report form to the permit holder or operator. Upon completion of an inspection, the Board of Health shall total the rating point values for all requirements in violation, and subtract that total from 100, the resulting total becomes the rating score for the establishment.

26.10-3 Issuance of notices. Whenever the Board of Health makes an inspection of a food-service establishment and discovers that any of the provisions of this Ordinance have been violated, it shall notify the permit holder or operator of such violations by means of an inspection report form or other written notice. In such notifications, the Board of Health shall:

- (A) Set forth the specific violations found, together with the rating score of the establishment.
- (B) Establish a specific and reasonable period of time for the correction of the violations found, substantially as follows:
 - (1) When the rating score of the establishment is 80 or more, all violations of 1 or 2 point items must be corrected as soon as possible, but in any event, by the time of the next routine inspection; or
 - (2) When the rating score of the establishment is between 80 and 60, all violations of 1 or 2 point items must be corrected within a period of time not to exceed 30 days; and
 - (3) When the violations are 4 or 5 point items, regardless of the rating score, such items must be corrected within a period of time not to exceed 10 days.
 - (4) When the rating score of the establishment is less than 60, the permit is subject to immediate suspension as provided in Section 26.08-2, herein. In case immediate suspension is not invoked, all 4 or 5 point items and all cleaning items shall be corrected within 48 hours from the time of inspection. Corrective action shall be initiated on all of the remaining violations. Re-inspections shall be conducted at reasonable time intervals to ensure correction. If, within the specified 48 hour time period, corrective action has not occurred, the establishment shall be closed as provided for in Section 26.08-2, herein.
 - (5) In case of temporary food-service establishments, violations must be corrected within a specified period of time not to exceed 24 hours. Failure to comply with such notice shall result in immediate suspension of the permit.
- (C) State that failure to comply with any notice issued in accordance with the provisions of this Ordinance may result in suspension of the permit as provided for in Section 26.08-2, herein.
- (D) State that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the Board of Health within the period of time established in the notice for correction.

26.10-4 Service of notices. Notices provided for under this section shall be deemed to have been properly served when a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the Board of Health.

26.11 EXAMINATION AND CONDEMNATION OF FOOD

Food may be examined or sampled by the Board of Health as often as may be necessary to determine freedom from adulteration or misbranding.

26.11-1 Hold orders. The Board of Health may, upon written notice to the owner or person in charge, place a hold order on any food which it determines or has probable cause to believe to be unwholesome or otherwise adulterated, or misbranded. Under a hold order, food shall be permitted to be suitably stored.

- (A) It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on food by the Board of Health, and neither such food nor containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the Board of Health, except on order by a court of competent jurisdiction.

26.11-2 Post-hearing actions. After the owner or person in charge has had a hearing as provided for in Section 26.09 herein, and on the basis of evidence produced at such hearing, or on the basis of its examination in the event a written request for a hearing is not received within 10 days, the Board of Health may vacate the hold order or may by written order direct the owner or person in charge of the food which was placed under the hold order to denature or destroy such food or to bring it into compliance with the provisions of this Ordinance: PROVIDED, that such order of the Board of Health to denature or destroy such food or bring it into compliance with the provisions of this Ordinance shall be stayed if the order is appealed to a court of competent jurisdiction within 3 days.

26.12 FOOD SERVICE ESTABLISHMENTS OUTSIDE JURISDICTION OF THE BOARD OF HEALTH

Food from food-service establishments outside the jurisdiction of the Board of Health of the County of McLean may be sold within the County of McLean, if such food-service establishments conform to the provisions of this Ordinance or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the Board of Health may accept reports from regulatory authorities in other jurisdictions where such food-service establishments are located.

26.13 PLAN REVIEW OF FUTURE CONSTRUCTION

When a food-service establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a food-service establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout arrangement, and construction materials of work areas, and the location, size and type of equipment and facilities, shall be submitted to the Board of Health in a manner prescribed by the Board of Health for approval before such work is begun. A proposed menu must be submitted with the plans. (Amended 10-19-93)

26.13-1 Variances

- (A) Any Food Service Establishment may request a variance from any requirement of this Ordinance and adopted references when such an establishment believes that the requirements results in an undue economic hardship or when it is believed a standard may not apply to the specific situation.
- (B) Requests shall be submitted in writing to the Board of Health and shall include the name and location of the business, the name of the licensee or prospective licensee when applicable, and the section for which a variance is being requested. Evidence of undue economic hardship should include estimates and costs for compliance. If it is believed that a standard may not apply to the specific situation, an explanation shall be included.
- (C) Any person who requests a variance for the provisions of these regulations shall have the burden of supplying the Board of Health with information that demonstrates the conditions exist which warrants the granting of a variance. All doubts shall be resolved in the interest of the public's health and safety and in the favor of denial.

(D) The Board of Health may grant a variance if:

- (1) Such variance is consistent with the purpose and intent of the most current edition of the Illinois Food Service Sanitation Code and its associated Acts and Codes and this Ordinance; and
- (2) It is consistent with the protection of the public health; and
- (3) In the opinion of the regulatory authority, a health hazard or nuisance will not result from the variance; and
- (4) The circumstances of the Food Service Establishment are unique; and
- (5) The cost of compliance is so great that it would threaten economic viability of the Food Service Establishment or the Food Service Establishment would be in grave jeopardy if compliance were enforced; and
- (6) The damage to the Food Service Establishment's economic viability is in fact caused by compliance.

(E) A variance shall be revoked or expire if:

- (1) In the opinion of the Board of Health the variance results in a health hazard or nuisance; or
- (2) There is a change of circumstances from those supporting the variance; or
- (3) There is a change of ownership of the Food Service Establishment.

(F) Any Food Service Establishment for which a variance has been denied may appeal such denial by requesting a hearing before the Board of Health. (Added 11-17-09)

26.14 EQUIPMENT STANDARDS

All new and replacement equipment shall meet or be equivalent to applicable National Sanitation Foundation (NSF) standards or, equivalent food equipment standards of another recognized testing agency that tests to NSF food equipment standards. If NSF food equipment standards do not exist for a piece of equipment, the equipment must be inspected and approved by this department before being placed into service. (Amended 10-19-93, 10-21-03)

All new or replacement three compartment sinks shall have two integral drain boards as original equipment from the manufacturer. (Added 10-21-03)

All new or replacement ice bins, where ice is used for both cooling beverage products and stored for human consumption, shall have an integral cold plate as original equipment from the manufacturer. (Added 10-21-03)

26.15 PROCEDURE WHEN INFECTION IS SUSPECTED

When the Board of Health has reasonable cause to suspect the possibility of disease transmission from any food-service establishment employee, the Board of Health shall secure a morbidity history of the suspected employee, or make such other investigation as may be indicated, and take appropriate action. The Board of Health may require any or all of the following measures:

- (A) the immediate exclusion of the employee from all food-service establishments;
- (B) the immediate closure of the food-service establishment concerned until, in the opinion of the Board of Health, no further danger of disease outbreak exists;
- (C) restriction of the employee's services to some areas of the establishment where there would be no danger of transmitting disease; and
- (D) adequate medical and laboratory examinations of the employee, of other employees, and of his or their body discharges.

26.16 PENALTIES

Any person who shall violate any of the provisions of this Ordinance shall be guilty of a Class B misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$500.00 or imprisonment of not more than six (6) months, or both. In addition thereto, such persons may be enjoined from continuing such violations. Each day upon which such violation occurs shall constitute a separate violation.

26.17 RESERVED

26.18 SEVERABILITY

The clauses, sentences, paragraphs, sections, articles and parts of this Ordinance are separable. If any clause, sentence, paragraph, section, article or part of this Ordinance shall for any reason be adjudged invalid by any court of appropriate jurisdiction, such judgment shall not affect, impair or invalidate the remainder thereof.

26.19 REPEAL AND DATE OF EFFECT

This Ordinance shall be in full force and effect immediately upon its adoption as provided by law; and the McLean County Food Service Establishment Ordinance, adopted June 17th 1980, by the County Board of McLean County, is hereby repealed.

26.20 - 26.23 RESERVED

Adopted 06-21-83

(Amended 9-17-85, 11-19-91, 11-17-92, 10-19-93, 9-20-94, 9-19-95, 9-17-96, 9-16-97, 10-20-98, 9-14-99, 10-17-00, 10-16-01, 11-19-02, 10-21-03, 11-16-04, 11-15-05, 11-17-09)

Article III Retail Food Stores

26.24 FOOD SANITATION REQUIREMENTS

Potentially hazardous food shall be maintained at safe temperatures of 41 degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, as appropriate, except during necessary periods of preparation and serving. (Added 11-17-09)

26.25 VENTILATION

In new or extensively remodeled retail food stores, all rooms from which obnoxious odors, vapors or fumes originate shall be mechanically vented to the outside. Ventilation systems shall be installed and operated according to law and when vented to the outside, shall not create an unsightly, harmful or unlawful discharge.

26.26 PERMIT

It shall be unlawful for any person to operate a retail food store within the County of McLean, or its police jurisdiction, who does not possess a valid permit which shall be issued annually to him by the Board of Health. Only a person who complies with the requirements of this Ordinance shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person and place to another person or place or from one mobile unit to another mobile unit. A valid permit shall be framed and posted in conspicuous view of the public in every retail food store. (Amended 09-20-94, 10-21-03)

26.26-1 Issuance of permits.

(A) Any person desiring to operate a retail food store shall make written application for a permit at least one week prior to the proposed date of opening on forms provided by the Board of Health. Such application shall be completed and signed by the owner or his or her representative.

(B) Upon receipt of such an application, the Board of Health shall cause to be inspected the retail food store named in application prior to the date of opening; and it shall determine if the retail food store is in compliance with the provisions of this Ordinance. When an inspection reveals that the provisions of the Ordinance have been met, a permit shall be issued. The permit for full-time establishments is valid through December 31 of the year issued. Seasonal permits expire six months after the date of issue or December 31, whichever one occurs sooner. (Amended 11-17-91)

(C) Any person who has not paid their annual fee for the renewal of their food permit by January 1 of the permit renewal year shall be considered to be operating a retail food store without a valid permit. However, the annual fee for the renewal of seasonal permits shall be paid at least one week prior to the reopening of the establishment. (Added 10-19-93)

26.26-2 Suspension of permits.

(A) Permits may be suspended temporarily by the Board of Health for failure of the holder to comply with the requirements of this Ordinance.

(B) Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of Section 26.29-3 of this Ordinance, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, suspended and that an opportunity for a hearing will be provided if within 72 hours a written request for a hearing is filed with the Board of Health by the permit holder.

(C) Notwithstanding the other provisions of this Ordinance, whenever the Board of Health finds insanitary or other conditions in the operation of a retail food store which, in its judgment, constitutes a substantial immediate hazard to the public health, it may without warning, notice, or hearing, issue a written notice to the permit holder or operator citing such condition, specifying the corrective action to be taken, and specifying the time period within such action shall be taken; and if deemed necessary, such order shall state that the permit is suspended at the time of inspection, and all retail food store operations are to be immediately discontinued. Any person to whom such an order is issued shall comply therewith, but, upon written petition filed not more than 72 hours after the discontinuance order, may request a hearing for abatement of the order. The Board of Health shall provide a hearing not later than 5 days from the filing of said petition.

26.26-3 Reinstatement of suspended permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within 5 days following a receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the Board of Health shall make a reinspection. If the applicant is in compliance with the requirements of this Ordinance, the permit shall be reinstated.

26.26-4 Revocation of permits.

A) The Board of health may revoke the permit of a licensed establishment for the following reasons.

- 1) Any fines imposed by judgment, arbitration, or by default and not fully paid to the health department within 30 days after the decision for the fine to be paid or by the date of permit renewal, whichever occurs first; or
- 2) For serious and/or repeated violations of this ordinance; or
- 3) For interference with the Board of Health in performance of its duties;

B) Right to hearing on revocation of permit.

- 1) Revocation of a permit as a result of any fines imposed by judgment, arbitration, or by default and not fully paid will not be entitled to a hearing.
- 2) For serious and/or repeated violations of this ordinance or, for interference with the Board of Health in performance of its duties; the permit may be permanently revoked after an opportunity for a hearing has been provided by the Board of Health. Prior to such hearing, the Board of Health shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of 5 days following service of such notice unless within such 5 day period a written petition for a hearing is filed with the Board of Health. The Board of Health

shall provide a hearing not later than 5 days from the filing of said petition. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

C) When a permit is suspended or revoked, no part of the fees paid for a permit shall be refunded to the permit owner or operating the food service establishment.

D) Reinstatement of Permit –

In cases where the revocation of the permit was the result of unpaid fines, the establishment may submit a written application on forms provided by the Board of Health for a new food permit after 30 days of satisfactorily paying all outstanding fines owed to the Health Department. Any establishment submitting a written application to reinstate a permit shall comply with all current food codes and regulations at the time of submitting an application prior to serving food.

In cases involving repeated violation or interferences with the performance of duties, the Board of Health will determine during the hearing if a person operating a food establishment may re-apply for a new permit. The decision by the Board of Health to allow a person to submit a written application to reinstate a permit shall comply with all current food codes and regulations at the time of submitting an application prior to serving food.

(Amended 11-16-10)

26.26.5 Food permit classification. Food permits shall be divided into the following classes:

Class A

- (3) A retail food store with three or more of the following food operations: meat cutting, a bakery where food items are prepared on-site from two or more ingredients, delicatessen or fresh fish.
- (4) A retail food store where vacuum packaging and/or other forms of reduced oxygen packaging are performed at the retail level.

Class B

- (7) A retail food store with one or two of the following food operations: meat cutting, a bakery where food items are prepared on-site from two or more ingredients, delicatessen or fresh fish.

Class C

- (6) A retail food store that prepares, processes, packages or repackages only non-potentially hazardous foods.
- (7) An Illinois Department of Agriculture inspected meat facility with a retail fresh meat case.

Class D

- (1) A mobile retail food store that sells potentially hazardous foods.

Class E

- (1) A retail food store where all potentially hazardous foods arrive at the store commercially prepared and pre-packaged from the supplier and are offered to the customers with out further processing or packaging or repackaging.
- (2) A vending commissary where all potentially hazardous foods arrive commercially prepared and prepackaged from the distributor and leave the commissary without further processing or repackaging.

Class F

- (1) Fee exempt establishments - churches, schools, governmental units and charitable tax-exempt, not-for-profit corporations registered under Section 501 (C) (3) of the Internal Revenue Code.
(Amended 9-17-96, 11-19-96)

26.26-6 Retail Food Store Permit Fees. The annual fees for food permits shall be:

Class A Permit - \$519.00

Class B Permit - \$391.00

Class C Permit - \$262.00

Class D Permit - \$262.00

Class E Permit - \$129.00

Class F Permit - No Fee

(Amended 11-17-92, 09-20-94, 9-19-95, 09-17-96, 09-16-97, 10-20-98, 09-14-99, 10-17-00, 10-16-01, 11-19-02, 10-21-03, 11-16-04, 11-15-05, 11-21-06, 11-20-07, 11-17-08, 11-17-09, 11-16-10, 10-18-11, 10-16-12, 12-17-13, 10-21-14)

- (A) Such fees shall be non-refundable and payable upon receipt of an invoice issued by the Board of Health.

(Amended 11-17-08)

- (B) Fees for permits issued after June 30 shall be reduced by one half the annual fee.

- (C) Fees for seasonal permits issued for periods of six months or less during any calendar year shall be reduced by one half the annual fee. (Sub-Section 26.26-6 added 09-17-85, Amended 11-19-91, 11-17-92)

26.26-7 First permit fee. The fee for the first permit issued to an owner, for each retail food store owned or operated, shall be increased by 40% of the annual fee for that establishment. If a business changes location, the owner shall be required to pay the 40% surcharge for the first permit at the new location. (Added 10-19-93, amended 10-21-03)

26.26-8 Penalty fee for late permit renewal payments. A late penalty fee of \$50.00 shall be assessed for permit renewal payments received after January 7 of the permit renewal year. The late penalty fee shall be increased to \$100.00 for payments received after January 21 of the renewal year. Any retail food store operating after February 4 of the permit renewal year without a renewed, valid permit, shall discontinue operation or be subject to prosecution pursuant to Section 26.26 and to the penalties contained in Section 26.35 of this Ordinance. (Added 10-19-93)

26.27 RESERVED

26.28 HEARINGS

- (A) The hearings provided for in this section shall be conducted by a quorum of the members of the Board of Health at a time and place designated by it.
- (B) Based upon the record of such hearing, the Board of Health shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing.
- (C) No action to sustain any order or revocation may be entered into without the concurrence of a majority of the members of the Board of Health. Any other action may be confirmed, modified or rescinded by a simple majority of the members present at such hearings.
- (D) A written report of the hearing decision shall be furnished to the permit holder by the Board of Health.

26.28-1 Judicial review of decisions. Any person, firm or corporation affected by the decisions, rules or regulations of the Board of Health of McLean County, Illinois, may have the decisions of said Board of Health reviewed in the Circuit Court of McLean County, Illinois, and all amendments and modifications thereof, and the rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of final administrative decisions of the said Board of Health. The term "Administrative Decisions" is defined in Section 1 of said Administrative Review Act.

26.29 INSPECTION OF RETAIL FOOD STORES

The Board of Health shall routinely inspect each retail food store located in the County of McLean, or its police jurisdiction, at a minimum frequency in accordance with the following schedule and shall make as many additional inspections and reinspections as are necessary for the enforcement of this Ordinance:

Class A Permits - Four times per year
Class B Permits - Three times per year
Class C, D & F Permits - Two times per year
Class E Permits - One time per year
(Amended 09-20-94, 09-17-96)

26.29-1 Access to establishments. The Board of Health, after proper identification, shall be permitted to enter, at any reasonable time, any retail food store within the County of McLean, or its police jurisdiction, for the purpose of making an inspection to determine compliance with this Ordinance. It shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received, or used and persons employed.

26.29-2 Inspection records, rating values, and rating scores. Whenever the Board of Health makes an inspection of a retail food store, it shall record its findings on an inspection report form to the permit holder or operator. Upon completion of an inspection, the Board of Health shall total the rating point values for all requirements in violation, and subtract that total from 100, the resulting total becoming the rating score for the establishment.

26.29-3 Issuance of notices. Whenever the Board of Health makes an inspection of a retail food store and discovers that any of the provisions of this Ordinance have been violated, it shall notify the permit holder or operator of such violations by means of an inspection report form or other written notice. In such notifications, the Board of Health shall:

- (A) Set forth the specific violations found, together with the rating score of the retail food store.
- (B) Establish a specific and reasonable period of time for the correction of the violations found, substantially as follows:
 - (1) When the rating score of the retail food store is 80 or more, all violations of 1 or 2 point items must be corrected as soon as possible but in any event, by the time of the next routine inspection; or
 - (2) When the rating score of the retail food store is between 80 and 60, all violations of 1 or 2 point items must be corrected within a period of time not to exceed 30 days; and
 - (3) When the violations are 4 or 5 point items, regardless of the rating score, such items must be corrected within a period of time not to exceed 10 days.
 - (4) When the rating score of the retail food store is less than 60, the permit is subject to immediate suspension as provided in Section 26.26-2, herein. In case immediate suspension is not invoked, all 4 or 5 point items and all cleaning items shall be corrected within 48 hours of the time of inspection. Corrective action shall be initiated on all of the remaining violations. Reinspection shall be conducted at a reasonable time interval to ensure correction. If, within the specified 48 hour time period, corrective action has not occurred, the retail food store shall be closed as provided for in Section 26.26-2, herein.
 - (5) In case of temporary retail food stores, violations must be corrected within a specified period of time not to exceed 24 hours. Failure to comply with such notice shall result in immediate suspension of the permit.
- (C) State that failure to comply with any notice issued in accordance with the provisions of this Ordinance may result in suspension of the permit as provided for in Section 26.26-2, herein.
- (D) State that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the Board of Health within the period of time established in the notice for correction.

26.29-4 Service of notices. Notices provided for under this section shall be deemed to have been properly served when a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested to the last known address of the permit holder. A copy of such notice shall be filed with the records of the Board of Health.

26.30 RESERVED

26.31 EXAMINATION AND CONDEMNATION OF FOOD

Food may be examined or sampled by the Board of Health as often as may be necessary to determine freedom from contamination or misbranding.

26.31-1 Hold orders. The Board of Health may, upon written notice to the owner or person in charge, place a hold order on any food which it determines or has probable cause to believe to be unwholesome or otherwise contaminated, or misbranded. Under a hold order, food shall be permitted to be suitably stored.

- (A) It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on food by the Board of Health, and neither such food nor the containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the Board of Health, except on order by a court of competent jurisdiction.

26.31-2 Post-hearing actions. After the owner or person in charge has had a hearing as provided for in Section 26.29, herein, and on the basis of evidence produced at such hearing, or on the basis of its examination in the event a written request for a hearing is not received within 10 days, the Board of Health may vacate the hold order or may by written order direct the owner or person in charge of the food which was placed under the hold order to denature or destroy such food or to bring it in compliance with the provisions of this Ordinance: PROVIDED, that such order of the Board of Health to denature or destroy such food or bring it into compliance with the provisions of this Ordinance shall be stayed if the order is appealed to a court of competent jurisdiction within 3 days.

26.32 RETAIL FOOD STORES OUTSIDE JURISDICTION OF THE BOARD OF HEALTH

Food from retail food stores outside the jurisdiction of the Board of Health of the County of McLean may be sold within the County of McLean, if such retail food stores conform to the provisions of this Ordinance or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the Board of Health may accept reports from regulatory authorities in other jurisdiction where such retail food stores are located.

26.33 PLAN REVIEW OF FUTURE CONSTRUCTION

When a retail food store is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a retail food store, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout arrangement, and construction materials of work areas, and the location, size and type of equipment and facilities, shall be submitted to the Board of Health in a manner prescribed by the Board of Health for approval before such work is begun.

26.33-1 Variances

- (A) Any Retail Food Store may request a variance from any requirement of this Ordinance and adopted references when such an establishment believes that the requirement results in an undue economic hardship or when it is believed a standard may not apply to the specific situation.
- (B) Requests shall be submitted in writing to the Board of Health and shall include the name and location of the business, the name of the licensee or prospective licensee when applicable, and the section for which a variance is being requested. Evidence of undue economic hardship should include estimates and costs for compliance. If it is believed that a standard may not apply to the specific situation, an explanation shall be included.
- (C) Any person who requests a variance for the provisions of these regulations shall have the burden of supplying the Board of Health with information that demonstrates the conditions exist which warrants the granting of a variance. All doubts shall be resolved in the interest of the public's health and safety and in the favor of denial.

(D) The Board of Health may grant a variance if:

- (1) Such variance is consistent with the purpose and intent of the most current edition of the Illinois Food Service Sanitation Code and its associated Acts and Codes and this Ordinance; and
- (2) It is consistent with the protection of the public health; and
- (3) In the opinion of the regulatory authority, a health hazard or nuisance will not result from the variance; and
- (4) The circumstances of the Retail Food Store are unique; and
- (5) The cost of compliance is so great that it would threaten economic viability of the Retail Food Store or the Retail Food Store would be in grave jeopardy if compliance were enforced; and
- (6) The damage to the Retail Food Store's economic viability is in fact caused by compliance.

(E) A variance shall be revoked or expire if:

- (1) In the opinion of the Board of Health the variance results in a health hazard or nuisance; or
- (2) There is a change of circumstances from those supporting the variance; or
- (3) There is a change of ownership of the Retail Food Store.

(F) Any Retail Food Store for which a variance has been denied may appeal such denial by requesting a hearing before the Board of Health. (Added 11-17-09)

26.34 EQUIPMENT STANDARDS

All new and replacement equipment shall meet or be equivalent to applicable National Sanitation Foundation (NSF) standards or, equivalent food equipment standards of another recognized testing agency that tests to NSF food equipment standards. If NSF food equipment standards do not exist for a piece of equipment, the equipment must be inspected and approved by this department before being placed into service. (Added 10-19-93, 10-21-03)

All new or replacement three compartment sinks shall have two integral drain boards as original equipment from the manufacturer. (Added 10-21-03)

26.35 PENALTIES

Any person who shall violate any of the provisions of this Ordinance shall be guilty of a Class B misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$500.00 or imprisonment of not more than six (6) months, or both. In addition thereto, such persons may be enjoined from continuing such violations. Each day upon which such violation occurs shall constitute a separate violation.

26.36 SEVERABILITY

The clauses, sentences, paragraphs, sections, articles, and parts of this Ordinance are separable. If any clause, sentence, paragraph, section, article or part of this Ordinance shall for any reason be adjudged invalid by any court of appropriate jurisdiction, such judgment shall not affect, impair, or invalidate the remainder thereof.

26.37 REPEAL AND DATE OF EFFECT

This Ordinance shall be in full force and effect immediately upon its adoption as provided by law; and the McLean County Retail Food Store Ordinance, adopted April 15, 1980, by the County Board of McLean County, is hereby repealed.

26.38 - 26.40 RESERVED

Adopted 8-16-83

(Amended 9-17-85, 11-19-91, 11-17-92, 10-19-93, 9-20-94, 9-19-95, 9-17-96, 9-16-97, 10-20-98, 9-14-99, 10-17-00, 10-16-01, 11-19-02, 10-21-03, 11-16-04, 11-15-05)

Article IV Bed and Breakfast Establishments

26.50 JURISDICTION

This Ordinance shall be effective in all of the area of McLean County outside the corporate limits of any city, town or village and also within the corporate limits of any city, town or village in McLean County where there is in effect an intergovernmental agreement between the governing body of said city, town or village, the County Board of McLean County and the Board of Health for the regulation of bed and breakfast establishments.

26.51 DEFINITIONS

In addition to the definitions contained in the State of Illinois Food Service Sanitation Rules and Regulations, the following definitions shall apply in the interpretation and enforcement of this Ordinance:

Bed and Breakfast Establishment - an operator-occupied residence providing accommodations for a charge to the public with no more than 5 guest rooms for rent, in operation for more than 10 nights in a 12 month period. Breakfast may be provided to the guests only. Bed and breakfast establishments shall not include motels, hotels, boarding houses, or food service establishments.

Commercially Prepared Sweet Baked Goods - an individually portioned and wrapped, non-potentially hazardous yeast or cake type bread, bun, croissant or roll with or without filling and/or icing.

Continental Breakfast - limited to only coffee, tea, and/or juice and commercially prepared sweet baked goods.

Guest Room - a sleeping room intended to serve no more than 2 transient guests per night.

Operator - the owner of a bed and breakfast establishment, or the owner's agent, who is required by the Bed and Breakfast Act to reside in the bed and breakfast establishment, or on contiguous property.

26.52 FOOD SANITATION REQUIREMENTS

- (1) Food shall be clean, wholesome, free from spillage, free from adulteration and misbranding and safe for human consumption. Containers of food shall be stored above the floor, on clean racks, shelves or other clean surfaces in such a manner as to be protected from splash or other contamination. Milk of only pasteurized Grade A may be used. Use of home canned food is prohibited except for jams and jellies.
- (2) Food shall be protected from contamination while being stored, prepared and served, and during transportation. Perishable foods shall be stored at temperatures that will protect them against spoilage. Potentially hazardous food shall be maintained at safe temperatures of 41 degrees F. or below, or 140 degrees F. or above, as appropriate, except during necessary periods of preparation and serving. Frozen food shall be kept at temperatures that will keep them frozen, except when being thawed for preparation. Potentially hazardous frozen food shall be thawed at refrigeration temperatures or below, quick thawed as part of the cooking process, or thawed by another method approved by the local Health Department. An indicating thermometer shall be located in each refrigerator. Raw fruits and vegetables shall be washed thoroughly before use. Stuffing, poultry, and pork products shall be cooked to heat all parts of the food at least 165 degrees F. before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs and other potentially hazardous prepared food, shall be prepared from chilled products with a minimum of manual contact. Portions of food once served to an individual may not be served again. Laundry facilities shall be separated from food preparation areas. Live animals shall be excluded from food preparation areas. (Amended 11-20-07)

- (3) No person knowingly infected with a communicable disease that may be transmitted by food handling may work in a bed and breakfast establishment.
- (4) If a bed and breakfast operator suspects that any employee, family member or the operator himself or herself has a communicable disease, the operator shall notify the McLean County Health Department immediately.
- (5) All operators shall be certified. Certification shall be achieved by successfully completing an examination offered by the local Health Department as described in the current edition of the State of Illinois Food Service Sanitation Rules and Regulations.
- (6) Persons preparing or serving food or washing utensils shall wear clean outer garments and maintain a high degree of personal cleanliness. They shall wash their hands thoroughly before starting work and as often as necessary while working to remove soil and contaminants. After visiting a toilet room, persons shall wash their hands thoroughly in a lavatory but never in the kitchen sink.
- (7) No one, while preparing or serving food, may use tobacco in any form.
- (8) Utensils shall be kept clean and in good repair.
- (9) Multi-use eating and drinking utensils shall be thoroughly cleaned after each use. Facilities needed for the operations of washing, rinsing and sanitizing shall be provided.
- (10) Pots, pans and other utensils used in the preparation or serving of food or drink and all food storage utensils shall be thoroughly cleaned after each use. Cooking surfaces of equipment, if any, shall be cleaned at least once each day. Non-food contact surfaces of equipment shall be cleaned at intervals that will keep them in a clean and sanitary condition.
- (11) Residential sinks and home-style mechanical dishwashing machines are acceptable facilities for washing multi-use eating and drinking utensils. Utensils shall be air-dried.
- (12) Immediately following either manual or mechanical washing of eating or drinking utensils, and pots, pans and other cooking utensils, these utensils shall be effectively sanitized by being submerged in a hypochlorite solution with a chlorine concentration continuously maintained in one hundred parts per million, or another approved sanitizing solution which shall be used at the concentration tested and approved by the local Health Department. Dishpans may be used to accomplish the final sanitizing rinse. The reuse of single service utensils is prohibited.

26.53 SOAP, LINEN AND TOWELS

Each person who is provided accommodations shall be provided individual soap and clean individual bath cloths and towels. Clean bed linen in good repair shall be provided for each guest who is provided accommodations and shall be changed between guests and as often as necessary. Clean linen shall be stored and handled in a sanitary manner.

26.54 WATER SUPPLY

- (A) Enough potable water for the needs of the bed and breakfast establishment shall be provided from a source constructed and operated according to law.
- (B) The water supply shall be sampled and analyzed prior to the opening of the bed and breakfast establishment and annually thereafter to determine the acceptability of the bacterial and nitrate qualities of water.

26.55 SEWAGE DISPOSAL

All water-carried sewage shall be disposed of by means of:

- (A) A public sewage system; or
- (B) A private sewage disposal system that is constructed and operated in conformance with the McLean County Private Sewage Disposal System Ordinance.

26.56 PLUMBING

All plumbing shall be sized, installed, and maintained in accordance with applicable provisions of the Illinois State Plumbing Code. Local Ordinances may be followed when standards are equal to or exceed those contained in the aforementioned Code. There shall be no cross connection between the safe water supply and any unsafe or questionable water supply, or any source of pollution through which the safe water supply might become contaminated.

26.57 PERMIT

It shall be unlawful for any person to operate a bed and breakfast establishment which serves breakfast within the County of McLean's jurisdiction, who does not possess a valid permit which shall be issued annually to him by the Board of Health. Only a person who complies with the requirements of this Ordinance shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person and place to another person or place. A valid permit shall be framed and posted in conspicuous view of the public.

26.57-1 Issuance of permits.

(A) Any person desiring to operate a bed and breakfast establishment shall make written application for a permit at least one week prior to the proposed date of opening on forms provided by the Board of Health. Such application shall be completed and signed by the owner or his or her representative.

(B) Upon receipt of such an application, the Board of Health shall cause to be inspected the bed and breakfast establishment named in the application prior to the date of opening; and it shall determine if the bed and breakfast establishment is in compliance with the provisions of this Ordinance. When an inspection reveals that the provisions of the Ordinance have been met, a permit shall be issued. The permit for full-time establishments is valid through December 31 of the year issued. Seasonal permits expire six months after the date of issue or December 31, whichever one occurs sooner. (Amended 11-17-92)

(C) Any person who has not paid their annual fee for the renewal of their food permit by January 1 of the permit renewal year shall be considered to be operating a bed and breakfast establishment without a valid permit. However, the annual fee for the renewal of seasonal permits shall be paid at least one week prior to the reopening of the establishment. (Added 10-19-93)

26.57-2 Suspension of permits.

(A) Permits may be suspended temporarily by the Board of Health for failure of the holder to comply with the requirements of this Ordinance.

(B) Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of Section 26.60-3 of this Ordinance, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, suspended and that an opportunity for a hearing will be provided, if within 72 hours, a written request for a hearing is filed with the Board of Health by the permit holder.

(C) Notwithstanding the other provisions of this Ordinance, whenever the Board of Health finds insanitary or other conditions in the operations of a bed and breakfast establishment which, in its judgment, constitute a substantial immediate hazard to the public health, it may without warning, notice or hearing, issue a written notice to the permit holder or operator citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken, and, it deemed necessary, such order shall state that the permit is suspended at the time of inspection, and all bed and breakfast operations are to be immediately discontinued.

(1) Any person to whom such an order is issued shall comply therewith, but, upon written petition filed not more than 72 hours after the discontinuance order, may request a hearing for abatement of the order.

(2) The Board of Health shall provide a hearing not later than 5 days from the filing of said petition.

26.57-3 Reinstatement of suspended permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within 5 days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the Board of Health shall make a reinspection. If the applicant is in compliance with the requirements of this Ordinance, the permit shall be reinstated.

26.57-4 Revocation of permits. For serious and/or repeated violations of any of the requirements of this Ordinance, or for interference with the Board of Health in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the Board of Health. Prior to such hearing, the Board of Health shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of 5 days following service of such notice unless within such 5 day period a written petition for a hearing is filed with the Board of Health. The Board of Health shall provide a hearing not later than 5 days from the filing of said petition. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

26.58 BED AND BREAKFAST PERMIT CLASSIFICATIONS

(A) Class H Permits: Bed and Breakfast Establishment - licensed to serve more than a continental breakfast.

(B) Class I Permits: Bed and Breakfast Establishment - licensed to serve a continental breakfast.

26.58-1 Bed and breakfast permit fees. The annual fees for the permit shall be:

Class H Permit - \$391.00

Class I Permit - \$262.00

(Amended 11-17-92, 09-20-94, 9-19-95, 09-17-96, 09-16-97, 10-20-98, 09-14-99, 10-17-00, 10-16-01, 11-19-02, 10-21-03, 11-16-04, 11-15-05, 11-21-06, 11-20-07, 11-17-08, 11-17-09, 11-16-10, 10-18-11, 10-16-12, 12-17-13, 10-21-14)

(A) Such fees shall be non-refundable and payable upon receipt of an invoice issued by the Board of Health.

(Amended 11-17-08)

(B) Fees for permits issued after June 30 shall be reduced by one half the annual fee.

(C) Fees for seasonal permits issued for periods of six month or less during any calendar year shall be reduced by one half the annual fee. (Amended 11-19-91, 11-17-92)

26.58-2 First permit fee. The fee for the first permit issued to an owner, for each bed and breakfast establishment owned or operated, shall be increased by 40% of the annual fee for the establishment. If a bed and breakfast establishment changes location, the owner shall be required to pay the 40% surcharge for the first permit at the new location. (Amended 11-17-92, 10-21-03)

26.58-3 Late penalty fee for late renewal payments. A late penalty fee of \$50.00 shall be assessed for permit renewal payments received after January 7 of the permit renewal year. The late penalty fee shall be increased to \$100.00 for payments received after January 21 of the renewal year. Any bed and breakfast establishment operating after February 4 of the permit renewal year without a renewed, valid permit, shall discontinue operation or be subject to prosecution pursuant to Section 26.57 and to the penalties contained in Section 26.64 of this Ordinance. (Added 10-19-93)

26.59 HEARINGS

(A) The hearings provided for in this section shall be conducted by a quorum of the members of the Board of Health at a time and place designated by it.

(B) Based upon the record of such hearing, the Board of Health shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing.

(C) No action to sustain any order of revocation may be entered into without the concurrence of a majority of the members of the Board of Health. Any other action may be confirmed, modified or rescinded by a simple majority of the members present at such hearings.

(D) A written report of the hearing decision shall be furnished to the permit holder by the Board of Health.

26.59-1 Judicial review of decisions. Any person, firm or corporation affected by the decisions, rules or regulations of the Board of Health of McLean County, Illinois, may have the decisions of said Board of Health reviewed in the Circuit Court of McLean County, Illinois, and all amendments and modifications thereof, and the rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of final administrative decisions of the said Board of Health. The term "Administrative Decisions" is defined in Section 1 of said Administrative Review Act.

26.60 INSPECTION

The Board of Health shall routinely inspect each bed and breakfast establishment located in the County of McLean's jurisdiction, at a minimum frequency in accordance with the following schedule and shall make as many additional inspections and reinspections as are necessary for the enforcement of this Ordinance:

Class H Permit - Three times per year

Class I Permit - Two times per year (Amended 09-20-94)

26.60-1 Access to establishments. The Board of Health, after proper identification, shall be permitted to enter, at any reasonable time, any bed and breakfast establishment within the County of McLean's jurisdiction, for the purpose of making an inspection to determine compliance with this Ordinance. It shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received, or used and persons employed.

26.60-2 Inspection records, rating value, and rating scores. Whenever the Board of Health makes an inspection of a bed and breakfast establishment, it shall record its findings on an inspection report form provided for this purpose, and shall furnish a copy of such inspection, report form to the permit holder or operator. Upon completion of an inspection, the Board of Health shall total the rating point values for all requirements in violation, and subtract that total from 65, the resulting total becoming the rating score for the establishment.

26.60-3 Issuance of notices. Whenever the Board of Health makes an inspection of a bed and breakfast establishment and discovers that any of the provisions of this Ordinance have been violated, it shall notify the permit holder or operator of such violations by means of an inspection report form or other written notice. In such notifications, the Board of Health shall:

(A) Set forth the specific violations found, together with the rating score of the establishment.

(B) Establish a specific and reasonable period of time for the correction of the violations found, substantially as follows:

(1) When the rating score of the establishment is 52 or more, all violations of 1 or 2 point items must be corrected as soon as possible but in any event, by the time of the next routine inspection; or

(2) When the rating score of the establishment is between 52 and 39, all violations of 1 or 2 point items must be corrected within a period of time not to exceed 30 days; and

(3) When the violations are 4 or 5 point items, regardless of the rating score, such items must be corrected within a period of time not to exceed 10 days.

(4) When the rating score of the establishment is less than 39, the permit is subject to immediate suspension as provided in Section 26.57-2, herein. In case immediate suspension is not invoked, all 4 or 5 point items and all cleaning items shall be corrected within 48 hours from the time on inspection. Corrective action shall be initiated on all of the remaining violations. Re-inspections shall be conducted at reasonable time intervals to ensure correction. If, within the specified 48-hour time period, corrective action has not occurred, the establishment shall be closed as provided for in Section 26.57-2, herein.

(C) State that failure to comply with any notice issued in accordance with the provisions of this Ordinance may result in suspension of the permit as provided for in Section 26.57-2, herein.

(D) State that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the Board of Health within the period of time established in the notice for correction.

26.60-4 Service of notices. Notices provided for under this section shall be deemed to have been properly served when a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the Board of Health.

26.61 EXAMINATION AND CONDEMNATION OF FOOD

Food may be examined or sampled by the Board of Health as often as may be necessary to determine freedom from adulteration or misbranding.

26.61-1 Hold orders. The Board of Health may, upon written notice to the owner or person in charge, place a hold order on any food which it determines or has probable cause to believe to be unwholesome or otherwise adulterated, or misbranded. Under a hold order, food shall be permitted to be suitably stored.

(A) It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on food by the Board of Health, and neither such food nor the containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the Board of Health, except on order by a court of competent jurisdiction.

26.61-2 Post-hearing actions. After the owner or person in charge has a hearing as provided for in Section 26.59, herein, and on the basis of evidence produced at such hearing, or on the basis of its examination in the event a written request for a hearing is not received within 10 days, the Board of Health may vacate the hold order or may by written order direct the owner or person in charge of the food which was placed under the hold order to denature or destroy such food or to bring it into compliance with the provisions of this Ordinance: PROVIDED, that such order of the Board of Health to denature or destroy such food or bring it into compliance with the provisions of this Ordinance shall be stayed if the order is appealed to a court of competent jurisdiction within 3 days.

26.62 PLAN REVIEW OF FUTURE CONSTRUCTION

When a bed and breakfast establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a bed and breakfast establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout arrangement, and construction materials of work areas, and the location, size and type of equipment and facilities, shall be submitted to the Board of Health in a manner prescribed by the Board of Health for approval before such work is begun. A proposed menu must be submitted with the plans. (Amended 10-19-93)

26.63 VARIANCES

(A) Any Bed and Breakfast Establishment may request a variance from any requirement of this Ordinance and adopted references when such an establishment believes that the requirement results in an undue economic hardship or when it is believed a standard may not apply to the specific situation.

(B) Requests shall be submitted in writing to the Board of Health and shall include the name and location of the business, the name of the licensee or prospective licensee when applicable, and the section for which a variance is being requested. Evidence of undue economic hardship should include estimates and costs for compliance. If it is believed that a standard may not apply to the specific situation, an explanation shall be included.

(C) Any person who requests a variance for the provisions of these regulations shall have the burden of supplying the Board of Health with information that demonstrates the conditions exist which warrants the granting of a variance. All doubts shall be resolved in the interest of the public's health and safety and in the favor of denial.

(D) The Board of Health may grant a variance if:

(1) Such variance is consistent with the purpose and intent of the most current edition of the Illinois Food Service Sanitation Code and its associated Acts and Codes and this Ordinance; and

(2) It is consistent with the protection of the public health; and

(3) In the opinion of the regulatory authority, a health hazard or nuisance will not result from the variance; and

(4) The circumstances of the Bed and Breakfast Establishment are unique; and

(5) The cost of compliance is so great that it would threaten economic viability of the Bed and Breakfast Establishment or the Bed and Breakfast Establishment would be in grave jeopardy if compliance were enforced; and

(6) The damage to the Bed and Breakfast Establishment's economic viability is in fact caused by compliance.

(E) A variance shall be revoked or expire if:

(1) In the opinion of the Board of Health the variance results in a health hazard or nuisance; or

(2) There is a change of circumstances from those supporting the variance; or

(3) There is a change of ownership of the Bed and Breakfast Establishment.

(F) Any Bed and Breakfast Establishment for which a variance has been denied may appeal such denial by requesting a hearing before the Board of Health.

(Added 11-17-09)

26.64 PROCEDURE WHEN INFECTION IS SUSPECTED

When the Board of Health has reasonable cause to suspect the possibility of disease transmission from any bed and breakfast establishment employee, the Board of Health shall secure a morbidity history of the suspected employee, or make such other investigation as may be indicated, and take appropriate action. The Board of Health may require any or all of the following measures:

(A) the immediate exclusion of the employee from all bed and breakfast establishments;

(B) the immediate closure of the bed and breakfast establishment concerned until, in the opinion of the Board of Health, no further danger of disease outbreak exists;

(C) restriction of the employee's services to some areas of the establishment where there would be no danger of transmitting disease; and

(D) adequate medical and laboratory examinations of the employee, or other employees, and of his and their body discharges.

26.65 PENALTIES

Any person who shall violate any of the provisions of this Ordinance shall be guilty of a petty offense and, upon conviction thereof, shall be punished by a fine of not more than \$500.00. In addition thereto, such persons may be enjoined from continuing such violations. Each day upon which such violation occurs shall constitute a separate violation.

26.66 RESERVED

26.67 SEVERABILITY

The clauses, sentences, paragraphs, sections, articles and parts of this Ordinance are separable. If any clause, sentence, paragraph, section, article or part of this Ordinance shall for any reason be adjudged invalid by any court of appropriate jurisdiction, such judgment shall not affect, impair or invalidate the remainder therefor.

26.68 REPEAL AND DATE OF EFFECT

This Ordinance shall be in full force and effect immediately upon its adoption as provided by law.

Adopted 9-20-88 (Amended 11-19-91, 11-17-92, 10-19-93, 9-20-94, 9-19-95, 9-17-96, 9-16-97, 10-20-98, 9-14-99, 10-17-00, 10-16-01, 11-19-02, 10-21-03, 11-16-04, 11-15-05)

Article V
Temporary Food Establishments

26.85 PERMIT

It shall be unlawful for any person to operate a temporary food establishment within the County of McLean, or its police jurisdiction, who does not possess a valid permit issued by the Board of Health. Only a person who complies with the requirements of this Ordinance shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person or establishment to another person or establishment or from one mobile unit to another. A person must have a temporary food permit for each temporary food establishment that is operated in this county. A valid permit shall be posted in conspicuous view of the public in every temporary food establishment or the food establishment cannot open. (Amended 10-16-01, 10-21-03)

26.85-1 Issuance of permits.

(A) Any person desiring to operate a temporary food establishment shall make written application for a permit at least five days prior to the proposed date of opening for each event or for each season on forms provided by the Board of Health. Such application shall be completed and signed by the owner or his or her representative. Applications submitted to the Board of Health less than 5 business days prior to the opening day of any listed event on the application shall be assessed a penalty fee of \$25.00.

(B) Upon receipt of such an application for a Class J Temporary Food Permit, the Board of Health at its discretion may inspect the temporary food establishment and determine if the establishment is in compliance with the provisions of this Ordinance before issuing the permit. The permit is valid for one single special event or celebration and for a period of time not to exceed 14 days.

(C) Upon receipt of such an application for a Class K Multiple Event Temporary Food Permit, the Board of Health shall cause to be inspected the temporary food establishment named in the application prior to the issuance of the permit to determine if the establishment is in compliance with the provisions of this Ordinance. When an inspection reveals that the provisions of the Ordinance have been met, a permit shall be issued. Multiple Event Temporary Food Permits shall expire six months after the date of issue or December 31, whichever one occurs sooner. (Amended 9-19-95, 11-17-09)

26.85-2 Suspension of permits.

(A) Permits may be suspended temporarily by the Board of Health for failure of the holder to comply with the requirements of this Ordinance.

(B) Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of Article 4 of this Ordinance, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, suspended and that an opportunity for a hearing will be provided, if within 72 hours, a written request for a hearing is filed with the Board of Health by the permit holder.

(C) Notwithstanding the other provisions of this Ordinance, whenever the Board of Health finds insanitary or other conditions in the operations of a temporary food establishment which, in its judgment, constitutes a substantial immediate hazard to the public health, it may without warning, notice or hearing, issue a written notice to the permit holder or operator citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken, and, if deemed necessary, such order shall state that the permit is suspended at the time of inspection and all food service operations are to be immediately discontinued.

(D) (1) Any person to whom such an order is issued shall comply therewith, but, upon written petition filed not more than 72 hours after the discontinuance order, may request a hearing for abatement of the order.

(2) The Board of Health shall provide a hearing not later than 5 days from the filing of said petition.

26.85-3 Reinstatement of suspended temporary food permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within 5 days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the Board of Health shall make a reinspection. If the applicant is in compliance with the requirements of this Ordinance, the permit shall be reinstated.

26.85-4 Revocation of temporary food permits. For serious and/or repeated violations of any of the requirements of this Ordinance, or for interference with the Board of Health in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the Board of Health. Prior to such hearing, the Board of Health shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of 5 days following service of such notice unless within such 5 day period a written petition for a hearing is filed with the Board of Health. The Board of Health shall provide a hearing not later than 5 days from the filing of said petition. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

26.85-5 Temporary food permit classifications. Temporary food permits shall be divided into three classes as follows:

(A) Class J Temporary Food Establishment Permit:

(1) Single Event - A one-time permit for a single special event or celebration.

(Amended 11-17-09)

(2) Single Event - Fee exempt.

(3) Single Event – a one-time permit for a three to fourteen day single special event or celebration.

(Added 11-17-09)

(B) Class K Temporary Food Establishment Permit:

(1) Multiple Event - A six-month permit to operate at single, special events or celebrations for a period of time not to exceed 14 days at any one single special event or celebration.

(2) Multiple Event - Fee exempt.

(Amended 9-19-95)

26.85-6 Temporary Food Permit Fees. The fees for temporary food permits shall be:

Class J Permit:

1-2 day special event: \$50.00

3-14 day special event \$75.00

Class K Permit - \$180.00

(Amended 09-17-96, 10-16-01, 11-16-04, 11-17-09)

(A) Fees shall be non-refundable and paid before a temporary food permit can be issued.

(Amended 11-17-08)

(B) Fee Exempt Establishments - Includes units of government and bona fide religious, charitable, educational, tax exempt and other not-for-profit organizations, registered under Section 501 (C) (3) of the Internal Revenue Service Code.

(Amended 11-17-09)

(C) The Board of Health may require proof of eligibility for any person or organization applying for a fee-exempt permit.

(D) Late Fees

(1) Any Temporary Food Permit Applications that are not received 5 business days prior to the first day of the proposed special event by the Board of Health will be charged a late fee of \$25.00 in addition to the required permit fee.

(2) Any person found operating a temporary food establishment before submitting a written application to and with approval from the Board of Health shall be assessed two times the corresponding Class J permit fee.

(Added 11-17-09)

26.86 HEARINGS

- (A) The hearings provided for in this section shall be conducted by a quorum of the members of the Board of Health at a time and place designated by it.
- (B) Based upon the record of such hearing, the Board of Health shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing.
- (C) No action to sustain any order of revocation may be entered into without the concurrence of a majority of the members of the Board of Health. Any other action may be confirmed, modified or rescinded by a simple majority of the members present at such hearings.
- (D) A written report of the hearing decision shall be furnished to the permit holder by the Board of Health.

26.86-1 Judicial review of decisions. Any person, firm or corporation affected by the decisions, rules or regulations of the Board of Health of McLean County, Illinois, may have the decisions of said Board of Health reviewed in the Circuit Court of McLean County, Illinois, and all amendments and modifications thereof, and the rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of final administrative decisions of the said Board of Health. The term "Administrative Decisions" is defined in Section 1 of said Administrative Review Act.

26.87 INSPECTION

Each temporary food establishment located in the County of McLean or its police jurisdiction, is subject to an opening inspection and as many additional inspections and reinspections as are deemed necessary by the Board of Health for the enforcement of this Ordinance.

26.87-1 Access to establishments. The Board of Health, after proper identification, shall be permitted to enter, at any reasonable time, any temporary food establishment within the County of McLean, or its police jurisdiction, for the purpose of making an inspection to determine compliance with this Ordinance. It shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received, or used and persons employed.

26.87-2 Inspection records, rating value, and rating scores. Whenever the Board of Health makes an inspection of a temporary food establishment, it shall record its findings on an inspection report form provided for this purpose, and shall furnish a copy of such inspection report form to the permit holder or operator.

26.87-3 Issuance of Notices. Whenever the Board of Health makes an inspection of a temporary food establishment and discovers that any of the provisions of this Ordinance have been violated, it shall notify the permit holder or operator of such violations by means of an inspection report form or other written notice. In such notifications, the Board of Health shall:

- (A) Set forth the specific violations found.
- (B) Establish a specific and reasonable period of time for the correction of the violations found, substantially as follows:
 - (1) Class J Temporary Food Establishment. All violations must be corrected at the time of the inspection or at the discretion of the Board of Health within a period of time not to exceed 24 hours.
 - (2) Class K Temporary Food Establishment.
 - a. All four or five point violations must be corrected at the time of the inspection or at the discretion of the Board of Health within a period of time not to exceed 24 hours.
 - b. All one and two point items must be corrected within 24 hours or at the discretion of the Board of Health before the establishment is operated at another single event or celebration.
- (C) State that failure to comply with any notice issued in accordance with the provisions of this Ordinance may result in suspension of the permit as provided in Section 26.85-2 herein.
- (D) State that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the Board of Health within the period of time established in the notice for correction.

26.87-4 Service of notices. Notices provided for under this section shall be deemed to have been properly served when a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the Board of Health.

26.88 EXAMINATION AND CONDEMNATION OF FOOD

Food may be examined or sampled by the Board of Health as often as may be necessary to determine freedom from adulteration or misbranding. Potentially hazardous food shall be maintained at safe temperatures of 41 degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, as appropriate, except during periods of preparation and serving. (Amended 11-17-09)

26.88-1 Hold orders. The Board of Health may, upon written notice to the owner or person in charge, place a hold order on any food which it determines or has probable cause to believe to be unwholesome or otherwise adulterate, or misbranded. Under a hold order, food shall be permitted to be suitably stored. It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on food by the Board of Health, and neither such food nor the containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the Board of Health, except on order by a court of competent jurisdiction.

26.88-2 Post-hearing actions. After the owner or person in charge has had a hearing as provided for in Section 26.86 herein, and on the basis of evidence produced at such hearing, or on the basis of its examination in the event a written request for a hearing is not received within 10 days, the Board of Health may vacate the hold order or may be written order direct the owner or person in charge of the food which was placed under the hold order to denature or destroy such food or to bring it into compliance with the provisions of this Ordinance: PROVIDED, that such order of the Board of Health to denature or destroy such food or bring it into compliance with the provisions of this Ordinance shall be stayed if the order is appealed to a court of competent jurisdiction within 3 days.

26.89 FOOD SERVICE ESTABLISHMENTS OR RETAIL FOOD STORES OUTSIDE THE JURISDICTION OF THE BOARD OF HEALTH

Food from food service establishments or retail food stores outside the jurisdiction of the Board of Health of the County of McLean may be sold within the County of McLean, if such food service establishments or retail food stores conform to the provisions of this Ordinance or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the Board of Health may accept reports from regulatory authorities in other jurisdictions where such food establishments are located.

26.90 PLAN REVIEW

The Board of Health may require that plans for construction, remodeling layout arrangement and construction materials for any hereafter constructed or remodeled temporary food establishment be submitted for approval before such work is begun. A proposed menu shall be submitted with the plans.

26.90-1 VARIANCES

(A) Any Temporary Food Establishment may request a variance from any requirement of this Ordinance and adopted references when such an establishment believes that the requirement results in an undue economic hardship or when it is believed a standard may not apply to the specific situation.

(B) Requests shall be submitted in writing to the Board of Health and shall include the name and location of the business, the name of the licensee or prospective licensee when applicable, and the section for which a variance is being requested. Evidence of undue economic hardship should include estimates and costs for compliance. If it is believed that a standard may not apply to the specific situation, an explanation shall be included.

(C) Any person who requests a variance for the provisions of these regulations shall have the burden of supplying the Board of Health with information that demonstrates the conditions exist which warrants the granting of a variance. All doubts shall be resolved in the interest of the public's health and safety and in the favor of denial.

(D) The Board of Health may grant a variance if:

(1) Such variance is consistent with the purpose and intent of the most current edition of the Illinois Food Service Sanitation Code and its associated Acts and Codes and this Ordinance; and

- (2) It is consistent with the protection of the public health; and
- (3) In the opinion of the regulatory authority, a health hazard or nuisance will not result from the variance; and
- (4) The circumstances of the Temporary Food Establishment are unique; and
- (5) The cost of compliance is so great that it would threaten economic viability of the Temporary Food Establishment or the Temporary Food Establishment would be in grave jeopardy if compliance were enforced; and
- (6) The damage to the Temporary Food Establishment 's economic viability is in fact caused by compliance.

(E) A variance shall be revoked or expire if:

- (1) In the opinion of the Board of Health the variance results in a health hazard or nuisance; or
- (2) There is a change of circumstances from those supporting the variance; or
- (3) There is a change of ownership of the Temporary Food Establishment.

(F) Any Temporary Food Establishment for which a variance has been denied may appeal such denial by requesting a hearing before the Board of Health.

(Added 11-17-09)

26.91 EQUIPMENT STANDARDS

All new and replacement equipment shall meet or be equivalent to applicable National Sanitation Foundation (NSF) standards or, equivalent food equipment standards of another recognized testing agency that tests to NSF food equipment standards. If NSF food equipment standards do not exist for a piece of equipment, the equipment must be inspected and approved by this department before being placed into service. In addition, adequate cold holding equipment must be provided to maintain potentially hazardous cold foods at 41°F or below. Mechanical refrigeration must be provided for temporary food events lasting 2 days or longer. Mechanical refrigeration is strongly recommended for all temporary food events. (Amended 11-19-02, 10-21-03)

All new or replacement three compartment sinks shall have two integral drain boards as original equipment from the manufacturer. (Added 10-21-03)

Handwashing facilities must be provided including a hands-free flowing type container with a spout, warm water, liquid soap, single use/disposable paper towels, and a container for catching waste water. Avoid direct hand contact with ready-to-eat foods by providing gloves, tongs, deli tissue, etc. (Added 11-19-02)

26.92 PROCEDURE WHEN INFECTION IS SUSPECTED

When the Board of Health has reasonable cause to suspect the possibility of disease transmission from any temporary food establishment employee, the Board of Health shall secure a morbidity history of the suspected employee, or make such other investigation as may be indicated, and take appropriate action. The Board of Health may require any or all of the following measures:

- (A) the immediate exclusion of the employee from all temporary food establishments;
- (B) the immediate closure of the food establishment concerned until, in the opinion of the Board of Health, no further danger of disease outbreak exists;
- (C) restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; and
- (C) adequate medical and laboratory examinations of the employee, of other employees, and of his and their body discharges.

26.93 PENALTIES

Any person who shall violate any of the provisions of this Ordinance shall be guilty of a Class B misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$500.00 or imprisonment of not more than six (6) months, or both. In addition

thereto, such persons may be enjoined from continuing such violations. Each day upon which such violation occurs shall constitute a separate violation.

26.94 RESERVED

26.95 SEVERABILITY

The clauses, sentences, paragraphs, sections, articles and parts of this Ordinance are separable. If any clause, sentence, paragraph, section, article or part of this Ordinance shall for any reason be adjudged invalid by any court of appropriate jurisdiction, such judgment shall not affect, impair or invalidate the remainder thereof.

26.96 DATE OF EFFECT

This Ordinance shall be in full force and effect upon its adoption as provided by law.

Adopted September 20, 1994. (Amended 9-19-95, 9-17-96, 10-16-01, 11-19-02, 10-21-03, 11-16-04)